

GALLAGHER & KENNEDY

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2009 APR 14 P 12:51

AZ CORP COMMISSION
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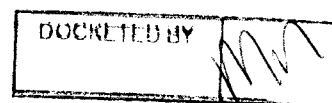
April 14, 2009

Arizona Corporation Commission
DOCKETED

APR 14 2009

HAND DELIVERED

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007



Re: *Garkane Application to Extend Its CC&N to Include Colorado City;
Late-Filed Exhibits as to State of Utah Financing Approval;
Docket No. E-01891A-08-0598*

Dear Sir or Madam:

Enclosed as late-filed exhibits in this matter are the original and 13 copies of (1) the Garkane Energy Cooperative, Inc. Application for Authority to Issue Securities before the Public Service Commission of Utah and (2) the Report and Order of the Public Service Commission of Utah Approving Issuance of Securities issued November 2, 2007.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By:

Michael M. Grant

MMG/plp
10703-3/2084073
Enclosures

cc (w/enclosures): Judge Sarah Harpring, Hearing Division (delivered)
Kevin Torrey, Legal Division (delivered)

Original and 15 copies filed with Docket
Control this 14th day of April, 2009.

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GARKANE ENERGY

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of)
Garkane Energy Cooperative, Inc.)
for Authority to Issue Securities)
)
)
)

DOCKET NO.

VERIFIED
APPLICATION FOR APPROVAL
OF ISSUANCE OF SECURITIES

Applicant Garkane Energy Cooperative Inc., ("Garkane") hereby submits this application for authority to issue securities in the form of a Secured Promissory Note and long-term Loan Agreement, together with related financing statement, and hereby requests an Order authorizing Garkane to issue securities in conjunction with a long-term loan facility and associated Secured Promissory Note in the amount of approximately \$15,000,000.00 (the "Long-Term Loan Facility"). Garkane hereby requests Informal Adjudication of the Application under R746-110, Rules of the Public Service Commission, and hereby represents that the Application is anticipated to be unopposed and uncontested.

Garkane hereby further requests expedited consideration of the Application on the grounds that Garkane's existing Line of Credit is expected to be inadequate to its anticipated needs for working capital and other financing requirements sometime no later than October 31, 2007 and that sufficient advance time will be needed prior to that time to provide necessary evidence to Garkane's secured creditor that the necessary approval(s) have been obtained to give effect to the Long-Term Loan Facility.

Finally, Garkane hereby requests a waiver by the Commission of the 20-day tentative period under R746-110-2 for good cause shown on the basis that the Long-Term Loan Facility, in order to provide maximum protection and flexibility to Garkane must be final and fully enforceable in full force and effect at all times without being subject to any appeal or protests in order to allow Garkane to draw upon the Long-Term Loan Facility in a timely manner and to thereby avoid any potential loss(es) or hardship(s) that would otherwise be occasioned, and to take advantage of relatively better payment options and repayment terms than would otherwise apply under the existing working capital line of credit.

Background.

1. In October, 1996, Garkane entered into a working capital Line of Credit with its creditor, the National Rural Utilities Cooperative Finance Cooperative ("CFC") which provided, among other things, for a secured line of credit in the amount of \$2,000,000.00 which can be used for general corporate purposes (the "Existing Line of Credit"). The Commission gave Garkane authorization to enter into and to secure the Existing Line of Credit pursuant to its Report and Order dated July 3, 1996 in Docket No. 96-506-01. Garkane has not drawn on the Existing Line of Credit to date, but as described more fully below, Garkane will have an urgent need to access a long-term financing source beginning in the next very short period of time. A copy of the Existing Line of Credit is submitted herewith.

2. In recent months, Garkane has undertaken a number of projects which will upgrade and replace aging utility plant and equipment, extend facilities for the delivery of electric power and service within Garkane's service area. Garkane has already begun to

construct additional facilities to increase the reliability of Garkane's system (the totality of such projects for improvements, replacements, and extensions are included as part of Garkane's four (4) year electric work plan). Since the Existing Line of Credit was put in place, Garkane has experienced substantial growth both in the number of members which it now serves and the volume of electricity which it purchases, produces, and delivers to its members. A number of these ongoing and planned projects will require additional financing sources above and beyond the \$2,000,000 that would be available under the Existing Line of Credit. Garkane anticipates that its financing requirements will exceed the existing \$2,000,000 as soon as within the next 30-60 days.

3. In addition, Garkane is actively considering, and has entered into preliminary investigation into, possible acquisition of some or all of certain electric distribution system assets currently owned by municipal utility systems located in areas where Garkane already provides service. Although no definitive decision has yet been made to make any such acquisition, should such an acquisition take place, depending on the facts, circumstances, terms and/or conditions, Garkane would be required to obtain additional financing source(s) to support such an acquisition.

4. Garkane has negotiated with CFC to supplement the Existing Line of Credit with the Long-Term Loan Facility, which will enable Garkane to draw up to \$15,000,000.00 and to repay such amounts on a long-term basis for the following purposes:

- a) For Garkane's four (4) year electric work plan; plus;
- b) For the potential acquisition (the "Potential Acquisition") of certain electric

facilities identified in Schedule 1 to the Long-Term Loan Facility, which are located within area(s) currently certificated to be served by Garkane.

Garkane does not intend to complete any portion of the Potential Acquisition unless and until: (i) all necessary approvals have been obtained for such acquisition; and (ii) Garkane's Governing Board approves all the material terms and conditions of any such Potential Acquisition. A copy of the Long-Term Loan Facility, including the Secured Promissory Note and the UCC-1 Financing Statement, each in substantively final form, is submitted herewith. Garkane will supplement this filing with fully executed copies of all relevant documents in their final form as they are completed.

5. The relevant terms of the Long-Term Loan Facility are as set forth therein, and primarily include the following:

- a) The maximum amount of borrowing authorized under the terms of the Long-Term Loan Facility will be approximately \$15,000,000.00;
- (b) The initial term of the Long-Term Loan Facility will be forty (40) years from the date of the Secured Promissory Note to be executed and delivered by Garkane to CFC to evidence the Long-Term Loan Facility (the "Maturity Date");
- (c) The amortization period of each Advance under the Replacement Facility will be thirty-five (35) years, unless specified otherwise in writing at Garkane's election at the time of each such Advance; provided that in no event may the Amortization period for any Advance extend beyond the Maturity Date;
- (d) The initial period under which Advances may be made will be for five (5) years

from the date of the Long-Term Loan Facility;

- (e) For each Advance under the Long-Term Loan Facility, Garkane may designate either a Fixed or a Variable interest rate. For those portions of Advances which Garkane elects a Fixed Rate, the relevant rate of interest will be such fixed interest rate(s) that CFC publishes and notifies Garkane in advance are offered from time to time for CFC's loans to its members which are similarly classified pursuant to CFC's policies and procedures then in effect. For those portions of Advances which Garkane elects a Variable Rate, the relevant rate of interest will be the rate established by CFC for variable interest rate long-term loans similarly classified pursuant to the long-term loan programs established by CFC from time to time.
- (f) The Long-Term Loan Facility will be secured by a first-lien mortgage on Garkane's electric system and assets.
- (g) Payments under the Long-Term Loan Facility will be due quarterly in February, May, August, and November, unless agreed otherwise between the parties. All amounts outstanding and unpaid as of the Maturity Date will be due and payable on the Maturity Date.

Public Interest

6. The approval of the Long-Term Loan Facility is the best available means available to Garkane to acquire and to maintain the necessary financial working capital for its operational needs, and will provide a vital source of funding in the event of liquidity needs for

debt service or ongoing operations. Garkane considered other reasonable alternatives to the Long-Term Loan Facility, including making draws from the Existing Line of Credit. The terms, options, and available rates available for long-term financing under the Long-Term Loan Facility are materially better, and more advantageous to Garkane, than the terms of repayment for draws submitted under the Existing Line of Credit. The Garkane Board of Directors approved and authorized the Long-Term Loan Facility at its regularly scheduled board meeting held July 30, 2007. Portions of the Minutes of the regularly scheduled Garkane Board meeting approving the Long-Term Loan Facility are submitted herewith.

7. The proposed Long-Term Loan Facility is for lawful objects within Garkane's proper corporate purposes, are compatible with the public interest, are necessary or appropriate for or consistent with the proper performance by Garkane of its services as a public utility, will not impair Garkane's ability to perform those services, and are reasonably necessary or appropriate for those purposes.

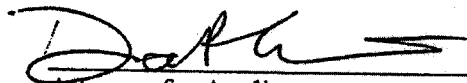
Requested Time of Approval

8. Garkane respectfully requests an Order from this Commission approving the issuance of the Garkane Guarantee and related transactions on or before September 30, 2007,

several weeks in advance of Garkane's anticipated need to draw funds thereon.

DATED this ____th day of August, 2007.

David F. Crabtree

A handwritten signature in dark ink, appearing to read 'D. Crabtree', is written over a horizontal line.

Attorney for Applicant

Garkane Energy Cooperative, Inc.

10714 South Jordan Gateway, Suite 300

South Jordan, Utah 84095

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Garkane
Energy Cooperative, Inc. for Authority to
Issue Securities

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DOCKET NO. 07-028-01

REPORT AND ORDER APPROVING
ISSUANCE OF SECURITIES

ISSUED: November 2, 2007

SYNOPSIS

No detriment to the public interest appearing, the Commission granted the authority sought by the Applicant with certain conditions.

By the Commission:

PROCEDURAL HISTORY

On August 31, 2007, Applicant Garkane Energy Cooperative, Inc. filed an application seeking authority pursuant to *Utah Code Ann.* § 54-4-31 to issue certain securities in the form of a long-term Loan Agreement and a related Secured Promissory Note in the amount of up to approximately \$15,000,000.00 (the "Long-Term Loan Facility"). Applicant requested Informal Adjudication of the Application under R746-110, Rules of the Public Service Commission, and represented that the matter was anticipated to be unopposed and uncontested. The Applicant further requested expedited consideration of the Application on the grounds that its current line of credit is expected to expire shortly and would, in all events, be insufficient for its anticipated cash requirements under anticipated work plans, and that sufficient advance time will be needed prior to year end to provide necessary evidence to Garkane's secured creditor that the necessary approval(s) have been obtained to circulate the executed documents and this

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Report and Order to give effect to the Long-Term Loan Facility in timely fashion. Finally, Applicant requested a waiver by the Commission of the 20-day tentative period under R746-110-2 for good cause shown on the basis that the Long-Term Loan Facility, in order to provide maximum protection and flexibility to Applicant, must be final and fully enforceable in full force and effect at all times without being subject to any appeal or protests in order to allow Applicant to meet its anticipated financing needs.

Applicant has submitted copies of the relevant documents, certified and verified pursuant to the Verified Application, and other information to establish the facts pertinent to the Application.

On October 25, 2007, the Division of Public Utilities filed a memorandum detailing its investigation of the Application and recommending approval of the same.

Since no meritorious opposition has been raised, and Applicant has made out its *prima facie* case in support of the Application, there appears no reason to convene an evidentiary hearing on the matter. Accordingly, the Commission, having been fully advised in the premises, enters the following Report, containing Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. In October, 1996, Applicant entered into a \$2,000,000.00 line of credit (the "Existing Line of Credit") with the National Rural Utilities Cooperative Finance Corporation ("CFC") which can be used for general corporate purposes. The Commission gave Applicant authorization to enter into and to secure the Existing Line of Credit pursuant to its Report and

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Order dated July 3, 1996 in Docket No. 96-506-01. Applicant states it has not drawn on the Existing Line of Credit to date.

2. In recent months, Applicant has undertaken a number of capital improvement projects which will upgrade and replace aging utility plant and equipment, and extend facilities for the delivery of electric power and service within its service area. Applicant has already begun to construct additional facilities to increase the reliability of the system and represents that it will require additional source(s) of long-term financing to sustain these projects as well as other planned improvements. Applicant represents that its financing requirements in the coming four years will easily exceed the \$2,000,000 that would be available to it under the Existing Line of Credit, and anticipates that its financing requirements could exceed that amount as soon as within the next 30-60 days.

3. The Long-Term Loan Facility will supplement the Existing Line of Credit, and can be used as an additional source of funds required for Applicant's electric work plan(s) as Applicant may choose to make use of it. The Long-Term Loan Facility can also be used as a source of financing for potential acquisition(s) of portions of electric distribution assets currently owned by municipal systems in Utah and Arizona located in areas currently certificated to be served by Applicant, but will only be used for such purposes if and when: (i) all required and necessary approvals have been obtained to complete any such acquisition(s); and (ii) Applicant's Board of Directors has approved all material terms and conditions to any such acquisitions.

4. The relevant terms of the Long-Term Loan Facility primarily include the following:

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- a. The maximum cumulative amount of borrowing (each such borrowing an "Advance") authorized under the terms of the Long-Term Loan Facility will be approximately \$15,000,000.00;
- b. The initial term of the Long-Term Loan Facility will be forty (40) years from the date of the Secured Promissory Note to be executed and delivered by Applicant to CFC to evidence the Long-Term Loan Facility (the "Maturity Date");
- c. The amortization period ("Amortization Period") of each Advance under the Replacement Facility will be thirty-five (35) years, unless specified otherwise in writing at Garkane's election at the time of each such Advance; provided that in no event will the Amortization period for any Advance extend beyond the Maturity Date;
- d. The initial period under which Advances may be made will be for five (5) years from the date of the Long-Term Loan Facility;
- e. For each Advance under the Long-Term Loan Facility, Applicant may designate either a Fixed or a Variable interest rate. For those portions of Advances which Applicant elects a Fixed Rate, the relevant rate of interest will be such fixed interest rate(s) that CFC publishes and notifies Applicant in advance are offered from time to time for CFC's loans to its members which are similarly classified pursuant to CFC's policies and procedures then in effect. For those portions of Advances which Applicant elects a Variable Rate, the relevant rate of interest will be the rate established by CFC for variable interest rate long-term loans similarly classified pursuant to the long-term loan programs established by CFC from time to time.

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f. The Long-Term Loan Facility will be secured by a first-lien mortgage on Applicant's electric system and assets.

g. Payments under the Long-Term Loan Facility will be due quarterly in February, May, August, and November, unless agreed otherwise between the parties. All amounts outstanding and unpaid as of the Maturity Date will be due and payable on the Maturity Date.

5. Applicant states it has analyzed and considered various alternatives to the proposed Long-Term Loan Facility, including accessing funds available under the Existing Line of Credit. The terms, options, and rates available for long-term financing under the Long-Term Loan Facility are materially better, and more advantageous to Applicant, than the terms of repayment for draws submitted under the Existing Line of Credit. Applicant has represented that the proposed Long-Term Loan Facility represents the best available means available to Applicant to acquire a flexible financing source for ongoing capital projects as well as a potential source of financing for future acquisitions of certain municipal power systems, should such acquisitions occur. The Long-Term Loan Facility was approved by Applicant's Board of Trustees at a regularly scheduled meeting of the board during July, 2007.

CONCLUSIONS OF LAW

1. It is in the public interest to convert this matter to an informal proceeding, pursuant to § 63-46b-4(3), Utah Code Annotated 1953, as amended.
2. Applicant is a public utility subject to the jurisdiction of this Commission.
3. This Commission has jurisdiction over the Application pursuant to the provisions of § 54-4-31(1), UCA 1953, as amended.

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4. Execution and delivery of the Long-Term Loan Facility as described herein is in the public interest.

5. Pursuant to Rule 746-110-2, good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.

2. Garkane Energy Cooperative, Inc., is hereby authorized to execute and to secure the Long-Term Loan Facility in the amount of approximately \$15,000,000, on substantially the same terms and conditions set forth in this Report and Order.

3. Applicant is hereby authorized to execute and deliver such documents and take such actions as may be reasonably necessary or convenient to the completion of the Proposed Long-Term Loan Facility.

4. Nothing in this Order shall be construed to obligate the State of Utah to pay or guarantee in any manner whatsoever any securities authorized, issued, assumed, or guaranteed hereunder.

5. The authority granted herein is effective the date of this Order.

Pursuant to Utah Code §§63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission

DOCKET NO. 07-028-01

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within 30 days after the effective date of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 2nd day of November, 2007.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#55204